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Campaign Finance: Constitutionality of Limits on Contributions and Expenditures

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Summary

The First Amendment to the U.S. Constitution provides that "Congress shall make no law ... abridging the freedom of speech, or of the press." This provision limits the government's power to restrict speech. In 1976, the Supreme Court issued its landmark campaign finance ruling in *Buckley v. Valeo*. In *Buckley*, the Court determined that limits on campaign contributions, which involve giving money to an entity, and expenditures, which involve spending money directly for electoral advocacy, implicate rights of political expression and association under the First Amendment. In view of the fact that contributions and expenditures facilitate speech, the Court concluded, they cannot be regulated as mere conduct.

The Court in *Buckley*, however, afforded different degrees of First Amendment protection to contributions and expenditures. Contribution limits are subject to more lenient review because they impose only a marginal restriction on speech, and will be upheld if the government can demonstrate that they are a "closely drawn" means of achieving a "sufficiently important" governmental interest. On the other hand, expenditure limits are subject to strict scrutiny because they impose a substantial restraint on speech. That is, limits on expenditures must be narrowly tailored to serve a compelling governmental interest. Therefore, in *Buckley* and its progeny, the Court has generally upheld limits on contributions, finding that they serve the governmental interest of protecting elections from corruption, while invalidating limits on independent expenditures, finding that they do not pose a risk of corruption. Importantly, the Court's recent case law has announced that only *quid pro quo* corruption or its appearance constitute a sufficiently important governmental interest to justify limits on contributions and expenditures. Although the Supreme Court's campaign finance jurisprudence has shifted over the years, the basic *Buckley* framework has generally been applied when determining whether a campaign finance limit violates the First Amendment.

This report discusses current Supreme Court and other case law evaluating the constitutionality of limits on contributions and expenditures. For example, while the Court has generally upheld reasonable limits on contributions, it has invalidated them when it found that they were too low, prohibited minors age 17 or under from contributing, and after determining that aggregate contribution limits serve as a complete ban once the aggregate amount has been reached. The Court has also ruled that a series of staggered increases in contribution limits for candidates whose opponents significantly self-finance their campaigns are unconstitutional. An appellate court has held that limits on contributions to groups making only independent expenditures are unconstitutional, which resulted in the creation of super PACs. Cases including *McConnell, Davis, SpeechNow.org*, *McCutcheon*, and *Williams-Yulee* are examined.

The Supreme Court has overturned limits on candidate expenditures, including limits on candidates using personal wealth to finance campaigns, as well as on independent expenditures by political parties. Further, the Court has held that requiring parties to choose between coordinated and independent expenditures after nominating a candidate is unconstitutional because it burdens the right of parties to make unlimited independent expenditures. On the other hand, the Court has upheld limits on party coordinated expenditures because they are functionally similar to contributions. The Court has also invalidated a long-standing prohibition on corporations, and it appears labor unions, using treasury funds for independent expenditures, finding that regardless of the speaker being a corporation, such expenditures are protected speech. Cases including *Colorado Republican Federal Campaign Committee, Randall, Wisconsin Right to Life,* and *Citizens United* are discussed.

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Introduction

The First Amendment to the U.S. Constitution provides that "Congress shall make no law ... abridging the freedom of speech, or of the press." This provision limits the government's power to restrict speech. In 1976, the Supreme Court issued its landmark campaign finance ruling in *Buckley v. Valeo.*[1] In *Buckley*, the Court found that limits on campaign contributions, which involve giving money to an entity, and expenditures, which involve spending money directly for electoral advocacy, implicate rights of political expression and association under the First Amendment.[2]

A number of principles contributed to the Court's analogy between money and speech. First, the Court found that candidates need to amass sufficient wealth to amplify and effectively disseminate their message to the electorate. Second, restricting political contributions and expenditures imposes a restriction on the amount of money that a candidate can spend on communications, thereby reducing the number and depth of issues discussed and the size of the audience reached.[3] This is because almost all modes of communicating ideas in a mass society require the spending of money. The Court further observed that the primary purpose of the First Amendment is to increase the quantity of public expression of political ideas. From these general principles, the Court concluded that contributions and expenditures facilitate an interchange of ideas, and cannot be regulated as mere conduct unrelated to their underlying act of communication.[4]

The Court in *Buckley*, however, afforded different degrees of First Amendment protection to contributions and expenditures. Contribution limits are subject to more lenient review, the Court found, because they impose only a marginal restriction on speech and will be upheld if the government can demonstrate that they are a "closely drawn" means of achieving a "sufficiently important" governmental interest. On the other hand, expenditure limits are subject to strict scrutiny because they impose a substantial restraint on speech. That is, limits on expenditures must be narrowly tailored to serve a compelling governmental interest. Therefore, in *Buckley* and its progeny, the Court has generally upheld limits on contributions, finding that they serve the governmental interest of protecting elections from corruption, while invalidating limits on independent expenditures, finding that they do not pose a risk of corruption. Importantly, the Court's recent case law has announced that only *quid pro quo* corruption or its appearance constitute a sufficiently important governmental interest to justify limits on contributions and expenditures. *Quid pro quo* corruption involves an exchange of money or something of value for an official act.

Although the Supreme Court's campaign finance jurisprudence has shifted over the years, the basic *Buckley* framework has generally been applied when determining whether a campaign finance limit violates the First Amendment. This report discusses current Supreme Court and other case law evaluating the constitutionality of limits on contributions and expenditures in various contexts. First, it examines contribution limits, covering base limits, aggregate limits, limits on candidates whose opponents self-finance, minors, and super PACs. As noted above, the Court has generally upheld limits on contributions, but the report examines exceptions to this

[1] 424 U.S. 1 (1976).

[2] *See id.* at 23.

[3] *See id.* at 19.

[4] *See id.* at 15-17.

general rule. It also examines a recent case that distinguishes between judicial and political elections in upholding a ban on the personal solicitation of contributions by judicial candidates. Then the report discusses expenditure limits, including limits on expenditures by candidates, political parties, and corporations and labor unions. The Court has determined that limits on expenditures are subject to strict scrutiny review, and accordingly, has found them to be unconstitutional.[5]

Contributions

Base Limits

The Supreme Court has generally upheld the constitutionality of reasonable limits on how much money a donor may contribute to a candidate. These contribution limits are known as "base limits." In contrast, as discussed in the section below, "aggregate limits" restrict how much money a donor may contribute in total to all candidates, parties, and political committees.

In *Buckley v. Valeo*,[6] the Court upheld the constitutionality of a Federal Election Campaign Act (FECA)[7] limit on individuals making contributions to candidates. While finding that limits on both contributions and expenditures implicate rights of political expression and association under the First Amendment, the Court distinguished between the two. Unlike expenditure limits, which reduce the amount of expression, contribution limits involve "little direct restraint" on the speech of a contributor.[8] The Court acknowledged that a contribution limit restricts an aspect of a contributor's freedom of association, that is, his or her ability to support a candidate. Nonetheless, the Court found that they still permit symbolic expression of support, and do not infringe on a contributor's freedom to speak about candidates and issues.[9] Reasonable contribution limits, the Court noted, still permit people to engage in independent political expression, associate by volunteering on campaigns, and assist candidates by making limited contributions.[10]

Therefore, the Court found, limits on contributions are permissible so long as they are "closely drawn" to serve a "sufficiently important interest."[11] In *Buckley*, the Court found that the government had demonstrated that preventing corruption or its appearance was sufficiently important to justify the FECA contribution limits.[12] The Court recognized that contribution limits

[5] For discussion of campaign finance policy issues, *see* CRS Report R41542, *The State of Campaign Finance Policy: Recent Developments and Issues for Congress*, by R. Sam Garrett.

[6] 424 U.S. 1 (1976).

[7] Codified at 52 U.S.C. §§ 30101 *et seq*., (formerly codified at 2 U.S.C. §§ 431 *et seq*.) In *Buckley*, the Supreme Court evaluated the constitutionality of certain provisions of federal campaign finance law including, the Federal Election Campaign Act (FECA) of 1971, as amended in 1974. In sum, the FECA provisions at issue included (1) a $1,000 contribution limit to any candidate by any individual; (2) a $25,000 limit on an individual's annual, aggregate contributions; (3) a $1,000 cap on a person's or group's independent expenditures "relative to a clearly identified candidate"; (4) spending limits on various candidates for various federal offices; and (5) spending limits on political parties' national conventions. Current FECA contribution limits are codified at 52 U.S.C. § 30116(a), (formerly codified at 2 U.S.C. § 441a(a)), and are adjusted biannually for inflation. 52 U.S.C. § 30116(c), (formerly codified at 2 U.S.C. § 441a(c)).

[8] *Buckley*, 424 U.S. at 21.

[9] *See id.* at 21, 24.

[10] *See id.* at 28-29.

[11] *Id.* at 25.

[12] *See id.* at 25-26.

serve as one of FECA's primary means to combat improper influence on candidates by contributors. Thus, the Court concluded that both the reality and appearance of corruption as a result of large campaign contributions was a sufficiently compelling interest to warrant infringements on First Amendment liberties "to the extent that large contributions are given to secure a *quid pro quo* from [a candidate.]"[13] Regarding whether the contribution limit was closely drawn, the Court found that it was relevant to examine the *amount* of the limit. Limits that are too low could significantly impede a candidate or political committee from amassing the necessary resources for effective communication.[14] The Court concluded, however, that the FECA contribution limit at issue in *Buckley* would not negatively impact campaign funding.

Since *Buckley*, the Court has similarly upheld the constitutionality of other contribution limits. In *Nixon v. Shrink Missouri Government PAC*,[15] the Court upheld a state law imposing contribution limits on candidates running for state office. The Court observed that while contribution limits must be closely drawn to a sufficiently important interest, the *amount* of the limitation "need not be 'fine tuned.'"[16] Under *Buckley*, the Court noted, a key inquiry regarding whether a contribution limit is too low is whether there is evidence demonstrating that the limit prevents a candidate from amassing sufficient funds for effective advocacy.[17]

Applying that principle, the Supreme Court has determined that certain contribution limits are too low and invalidated them under the First Amendment. In *Randall v. Sorell*,[18] in a plurality opinion, the Court invalidated a Vermont law that included a limit of $400 on individual, party, and political committee contributions to certain state candidates, per two-year election cycle. The law did not provide for inflation adjustment. While unable to reach consensus on a single opinion, six Justices agreed that the contribution limits violated First Amendment free speech guarantees. The plurality opinion written by Justice Breyer, joined by two other Justices, found that the contribution limits in this case were substantially lower than limits it had previously upheld as well as limits in effect in other states, and that they were not narrowly tailored. The opinion also concluded that the limits substantially restricted candidates, particularly challengers, from being able to raise the funds necessary to run a competitive campaign; impeded parties from getting their candidates elected; and deterred individual citizens from volunteering on campaigns (because the law counted certain volunteer expenses toward a volunteer's individual contribution limit).[19]

Aggregate Limits

The Supreme Court has held that aggregate limits on contributions are unconstitutional under the First Amendment. Aggregate limits restrict how much money a donor may contribute in total to all candidates, parties, and political committees. Characterizing them as a ban on further contributions once the aggregate amount has been reached, the Court has determined that they

[13] *Id.* at 27.

[14] *See id.* at 21.

[15] 528 U.S. 377 (2000).

[16] *Id.* at 387-88 (quoting *Buckley*, 424 U.S. at 30, n. 3).

[17] *See id.* at 397.

[18] 548 U.S. 230 (2006).

[19] *See id.* at 253, 259-60. The opinion agreed with the district court "that the Act's contribution limits 'would reduce the voice of political parties' in Vermont to a 'whisper.'" *Id.* at 259 (quoting *Landell v. Sorrell*, 118 F. Supp. 2d 459, 487 (D. Vt. 2000)).

violate the First Amendment by infringing on political expression and association rights, without furthering the governmental interest of preventing *quid pro quo* corruption or its appearance.

In *McCutcheon v. Federal Election Commission*,[20] the Supreme Court invalidated Section 307(b) of the Bipartisan Campaign Reform Act of 2002 (BCRA),[21] which amended FECA, imposing biennial limits on aggregate contributions. These limits were adjusted for inflation each election cycle. For example, during the 2011-2012 election cycle, the law prohibited individuals from making contributions to candidates totaling more than $46,200, and to parties and political action committees (PACs) (with the exception of "super PACs") totaling more than $70,800.[22] The base limits on contributions established by the BCRA were not at issue in this case and remain in effect.

As a threshold matter, the plurality opinion in *McCutcheon* determined that it was unnecessary to revisit the contribution/expenditure distinction established in *Buckley v. Valeo*, and the differing standards of review applicable to each.[23] According to the opinion, regardless of whether strict scrutiny or the "closely drawn" standard applies, the analysis "turns on the fit" between the government's stated objective and the means to achieve it.[24] Applying that analysis to the aggregate contribution limits, the opinion found a "substantial mismatch" between the two, and concluded that even under the more lenient standard of review, the limits could not be upheld.[25]

Importantly, the opinion announced that throughout the Court's campaign finance cases dating back 40 years, it has identified only one legitimate governmental interest for restricting campaign financing: the prevention of *quid pro quo* corruption or its appearance.[26] Essentially, *quid pro quo* corruption captures the notion of "a direct exchange of an official act for money."[27] While acknowledging that the Court's campaign finance jurisprudence has not always discussed the concept of corruption clearly and consistently, and that the line between *quid pro quo* corruption and general influence may sometimes seem vague, the opinion said that efforts to ameliorate "influence over or access to" elected officials or political parties do not constitute a permissible governmental interest.[28] According to the opinion, the spending of large sums of money in connection with elections, but absent an effort to control how an officeholder exercises his or her official duties, does not give rise to *quid pro quo* corruption.[29] Further, the opinion notes that the

[20] 134 S. Ct. 1434 (2014). For further discussion, *see* CRS Report R43334, *Campaign Contribution Limits: Selected Questions About McCutcheon and Policy Issues for Congress*, by R. Sam Garrett.

[21] P.L. 107-155, § 307(b), codified at 52 U.S.C. § 30116(a)(3), (formerly codified at 2 U.S.C. § 441a(a)(3)). BCRA is also known as "McCain-Feingold," in reference to the principal Senate sponsors of the legislation.

[22] Of that amount, no more than $46,200 could be contributed to state and local parties. In comparison, during the same election cycle, individuals were subject to individual base limits of $2,500 per candidate, per election; $30,800 per year to national parties; $10,000 per year to state, local and district party committees combined; and $5,000 per year to PACs. Contributions to super PACs are not subject to limits, *see infra* at p. 8.

[23] While concurring in the judgment, Justice Thomas wrote an opinion maintaining that *Buckley v. Valeo*, and its differing treatment of contributions and expenditures, denigrates free speech, and therefore should be overruled. The concurrence further observed that although the plurality opinion purports not to overrule *Buckley*, it nonetheless "continues to chip away at its footings." *McCutcheon*, 134 S. Ct. at 1464 (Thomas, J., concurring).

[24] *Id.* at 1434.

[25] *Id.*

[26] *See id.* at 1441 (citing *Citizens United v. Federal Election Commission*, 558 U.S. 310, 359 (2010)).

[27] *Id.*

[28] *Id.* at 1451.

[29] The Court explained that "[t]he hallmark of corruption is the financial quid pro quo: dollars for political favors." *Id.* at 1441 (quoting *Federal Election Commission v. National Conservative Political Action Committee*, 470 U.S. 480, 497 (1985)).

Court has consistently rejected campaign finance regulation based on other governmental objectives, such as goals to "level the playing field," "level electoral opportunities," or "equaliz[e] the financial resources of candidates."[30] Although the Court did not expressly adopt a stricter standard of review for contribution limits, its announcement that only *quid pro quo* corruption or its appearance serve as a compelling governmental interest may impact the degree to which contribution limits are upheld in future rulings.

In *Buckley v. Valeo*, the Court had upheld the constitutionality of a $25,000 federal aggregate contribution limit, then in effect. While acknowledging that it imposed an ultimate restriction upon the number of candidates and committees with which an individual can associate, the Court in *Buckley* characterized it as a "quite modest restraint" that served to prevent evasion of base limits.[31] The plurality in *McCutcheon* distinguished the *Buckley* precedent and concluded that it did not control. In *Buckley*, the plurality opinion observed, the Court had engaged in minimal analysis of aggregate limits. Further, the limits at issue in *McCutcheon*, which were enacted in 2002, established a different statutory regime and operated under a distinct legal backdrop. Since *Buckley* was decided, the opinion observed, statutory and regulatory safeguards against circumvention have been enacted.[32] The opinion also outlined additional safeguards that Congress could enact to prevent circumvention of base contribution limits, such as targeted restrictions on transfers among candidates and political committees or enhanced restrictions on earmarking, but cautioned that the opinion was not meant to evaluate the validity of any particular proposal.[33]

Further distinguishing the holding in *Buckley*, the ruling emphasized that aggregate contribution limits restrict how many candidates and committees that an individual can support, which is not a "modest restraint."[34] Once an individual contributed $5,200 each to nine candidates, the aggregate limits were triggered and, as the opinion calculates, the individual was then prohibited from making further contributions, up to the maximum permitted by the base limits, to other candidates. This "outright ban" on further contributions, the opinion concludes, unconstitutionally restricts both free speech and association rights.[35] In response to a point made by the dissent,[36] the opinion stated that the proper focus of First Amendment protections is on the individual's right to engage in political speech, not on a generalized concept of the public good through "collective speech."[37]

Candidates Whose Opponents Self-Finance

The Supreme Court has ruled that a statute establishing a series of staggered increases in contribution limits for candidates whose opponents significantly self-finance their campaigns violates the First Amendment. In *Davis v. Federal Election Commission*,[38] the Supreme Court

[30] *Id.* at 1450.

[31] Buckley v. Valeo, 424 U.S. 1, 38 (1976).

[32] *See McCutcheon*, 134 S. Ct. at 1446-48.

[33] *See id.* at 1458-59.

[34] *Id.* at 1448.

[35] *Id.* at 1448-49.

[36] The dissent maintained that the First Amendment was designed to protect "collective speech" in order to preserve democratic order, not just the political speech rights of an individual. *Id.* at 1467 (Breyer, J., dissenting).

[37] *McCutcheon*, 134 S. Ct. at 1449.

[38] 554 U.S. 724 (2010). For further discussion, *see* CRS Report RS22920, *Campaign Finance Law and the Constitutionality of the "Millionaire's Amendment": An Analysis of Davis v. Federal Election Commission*, by L. Paige Whitaker.

invalidated such a provision, finding that the penalty it imposed on expenditures of personal funds is not justified by the compelling governmental interest of lessening corruption or its appearance.

The provision at issue in this case was enacted as part of BCRA and is known as the "Millionaire's Amendment."[39] Until it was invalidated by the *Davis* ruling, the complex statutory formula provided (using limits that were in effect at the time the case was considered) that if a candidate for the House of Representatives spent more than $350,000 of personal funds during an election cycle, individual contribution limits applicable to his or her opponent were increased from the usual current limit ($2,300 per election) to up to triple that amount (or $6,900 per election). Likewise for Senate candidates, a separate provision generally raised individual contribution limits for a candidate whose opponent exceeds a designated threshold level of personal campaign funding that is based on the number of eligible voters in the state.[40] For both House and Senate candidates, the increased contribution limits were eliminated when parity in spending was reached between the two candidates.

The Court noted that while it has long upheld the constitutionality of limits on individual contributions, it has definitively rejected any limits on a candidate's expenditure of personal funds to finance campaign speech.[41] In *Buckley v. Valeo*, the Court noted, it had determined that such limits impose a significant restraint on a candidate's right to advocate for his or her own election that are not justified by the compelling governmental interest of preventing corruption. That is, instead of preventing corruption, it had determined that the use of personal funds actually lessens a candidate's reliance on outside contributions and thereby counteracts coercive pressures and risks of abuse that contribution limits seek to avoid.

While acknowledging that the Millionaire's Amendment does not directly impose a limit on a candidate's expenditure of personal funds, the Court concluded that it nonetheless imposed an "unprecedented penalty on any candidate who robustly exercises that First Amendment right."[42] Further, the Court said that it required a candidate to make a choice between the right of free political expression and being subjected to discriminatory contribution limits. Indeed, the Court concluded that if a candidate vigorously exercises the right to use personal funds, the law creates a fundraising advantage for his or her opponents. In contrast, if the law had simply increased the contribution limits for all candidates—both the self-financed candidate as well as the opponent—the Court opined that it would have passed constitutional muster.

In response to the Federal Election Commission's (FEC's) argument that the statute's "asymmetrical limits" are justified because they level the playing field for candidates of differing personal wealth, the Court pointed out that its campaign finance precedent offers no support for this rationale serving as a compelling governmental interest. According to the Court, preventing corruption or its appearance are the only legitimate compelling governmental interests identified so far that justify restrictions on campaign financing.[43] Quoting *Buckley*, the Court reiterated that restricting the speech of some, in order to enhance the relative speech of others, is "wholly

[39] P.L. 107-155, § 319(a), codified at 52 U.S.C. § 30117(a), (formerly codified at 2 U.S.C. § 441a-1(a)), established increased contribution limits for House candidates whose opponents significantly self-finance their campaigns.

[40] P.L. 107-155, § 304, codified at 52 U.S.C. § 30116(i), (formerly codified at 2 U.S.C. § 441a(i)), established increased contribution limits for Senate candidates whose opponents significantly self-finance their campaigns.

[41] *Davis*, 554 U.S. at 738. The Court pointed out that "[i]n *Buckley*, we soundly rejected a cap on a candidate's expenditure of personal funds to finance campaign speech." *Id.* (citing *Buckley*, 424 U.S. at 52-53).

[42] *Id.* at 724.

[43] *Id.* at 741.

foreign to the First Amendment."[44] Intrinsically, candidates have different strengths based on factors such as personal wealth, fundraising ability, celebrity status, or a well-known family name. By attempting to level electoral opportunities, the Court observed, Congress is deciding which candidate strengths should be allowed to impact an election. Using election law to influence voters' choices, the Court warned, is "dangerous business."[45]

Minors

The Supreme Court has decided that a prohibition on contributions by minors age 17 or younger violates the First Amendment. In *McConnell v. Federal Election Commission*,[46] by a unanimous vote, the Court invalidated Section 318 of BCRA,[47] which prohibited individuals age 17 or younger from making contributions to candidates and political parties. Determining that minors enjoy First Amendment protection and that contribution limits impinge on such rights, the Court determined that the prohibition was not closely drawn to serve a sufficiently important interest.[48]

In response to the government's assertion that such a prohibition protects against corruption by conduit—that is, parents donating through their minor children to circumvent contribution limits—the Court found little evidence to support the existence of this type of evasion. Furthermore, the Court postulated that such circumvention of contribution limits may be deterred by the FECA provision prohibiting contributions in the name of another person and the knowing acceptance of contributions made in the name of another person. Even assuming arguendo, that a sufficiently important interest could be provided in support of the prohibition, the Court determined that it is over inclusive. The Court observed that various states have found more tailored approaches to address this issue, for example, by counting contributions by minors toward the total permitted for a parent or family unit, imposing a lower cap on contributions by minors, and prohibiting contributions by very young children. The Court, however, expressly declined to decide whether any alternatives would pass muster.[49]

Super PACs

The U.S. Court of Appeals for the District of Columbia has held that limits on contributions to groups that make only independent expenditures are unconstitutional. In *SpeechNow.org v. Federal Election Commission,*[50] the court concluded that because the Supreme Court in *Citizens United v. Federal Election Commission*[51] determined that independent expenditures do not give rise to corruption, contributions to groups making only independent expenditures do not give rise to corruption.[52] *Citizens United* is discussed in greater detail below, in the portion of the report examining limits on expenditures.

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[44] *Id.* at 742 (quoting *Buckley*, 424 U.S. at 48-49).

[45] *Id.*

[46] 540 U.S. 93 (2003).

[47] P.L. 107-155, § 318, codified at 52 U.S.C. § 30126, (formerly codified at 2 U.S.C. § 441k).

[48] *See McConnell*, 540 U.S. at 231-32 (citing *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 511-513 (1969); *Buckley v. Valeo*, 424 U.S. 1, 20-22 (1976)).

[49] *See id.* at 232.

[50] 599 F.3d 686 (D.C. Cir. 2010), *cert. denied*, Keating v. Federal Election Commission, 131 S. Ct. 553 (2010).

[51] 558 U.S. 310 (2010). For further discussion, *see infra* pp. 10-14.

[52] *See SpeechNow.org*, 599 F.3d at 694-95.

In *Citizens United,* the Court relied, in part, on its ruling in *Buckley v. Valeo.*[53] In *Buckley*, it determined that expenditures made "totally independently"—in other words, not coordinated with any candidate or party—do not create a risk of corruption or its appearance, and therefore, cannot be constitutionally limited.[54] Accordingly, the Court in *SpeechNow.org* reasoned that the government does not have an anti-corruption interest in limiting contributions to groups that make only independent expenditures. It further concluded that FECA contribution limits are unconstitutional as applied to such groups.[55] Such groups have come to be known as "super PACs" or "Independent Expenditure-only Committees."[56]

Since *SpeechNow* was decided, the Federal Election Commission has issued advisory opinions (AOs) providing guidance regarding the establishment and administration of super PACs. For example, the FEC concluded that a tax-exempt § 501(c)(4) corporation may establish and administer a political committee that makes only independent expenditures, and may accept unlimited contributions from individuals.[57] It confirmed that such committees may also accept unlimited contributions from corporations, labor unions, and political committees, in addition to individuals.[58] The FEC also determined that when fundraising for super PACs, federal candidates, officeholders, and party officials are subject to FECA fundraising restrictions.[59] That is, they can only solicit contributions up to $5,000 from individuals (other than foreign nationals or federal contractors) and federal PACs.

Judicial Elections

The Supreme Court has upheld a Florida canon of judicial conduct that prohibits the personal solicitation of campaign contributions by judges and judicial candidates, finding that it does not violate the First Amendment. At the outset, it is important to note that this case does not address the constitutionality of a contribution limit, but a ban on the personal *solicitation* of contributions. Furthermore, it involves the regulation of *judicial* candidates, not candidates in the political arena, a pivotal distinction made by the Court.

[53] 424 U.S. 1 (1976).

[54] *Id.* at 47. ("Unlike contributions, such independent expenditures may well provide little assistance to the candidate's campaign and indeed may prove counterproductive. The absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a quid pro quo for improper commitments from the candidate.").

[55] *See SpeechNow.org,* 599 F.3d at 694-96. *See also*, *Carey v. Federal Election Commission,* 791 F. Supp. 2d 121 (D.D.C. 2011) (enjoining the FEC from enforcing contribution limits against a nonconnected PAC, *i.e.*, a PAC unaffiliated with a corporation or union, for its independent expenditures, as long as the PAC maintained a bank account for its unlimited contributions separate from its account subject to limits; proportionally paid related administrative costs; and complied with the applicable monetary limits of hard money contributions).

[56] For further discussion, *see* CRS Report R42042, *Super PACs in Federal Elections: Overview and Issues for Congress*, by R. Sam Garrett.

[57] AO 2010-09, issued to Club for Growth, Inc.

[58] AO 2010-11, issued to Commonsense Ten.

[59] AO 2011-12, issued to Majority PAC.

Williams-Yulee v. Florida Bar,[60] decided by a 5-4 vote, found that a state judicial candidate's speech must be subject to "the highest level of First Amendment protection."[61] In a rare instance for free speech jurisprudence, the Court concluded that the regulation passes even the most heightened scrutiny because it protects judicial integrity, and maintains the public's confidence in an impartial judiciary.[62] In an earlier ruling, *Republican Party of Minnesota v. White*,[63] the Court had struck down a state's canon of judicial conduct restricting judicial candidates from announcing their views on legal and political issues. Although the Court in *White* had also evaluated the restriction under strict scrutiny—requiring that a restriction be narrowly tailored to serve a compelling governmental interest—and similarly recognized the risks to impartiality posed by electing judges, it suggested that concerns about judicial integrity should be directed at the process of selection.[64] In contrast, the opinion in *Williams-Yulee,* written by Chief Justice Roberts, clarified that concerns about impartiality could at least in part be achieved through strict regulation of judicial candidates, rather than by altering the selection process as a whole.[65]

This 2015 decision stands in contrast to the Court's recent campaign finance rulings. For example, as discussed in this report, in 2014, the Court in *McCutcheon*[66] invalidated aggregate limits on campaign contributions to federal candidates, PACs, and parties. In 2010, in *Citizens United*,[67] it invalidated limits on independent spending by corporations and labor unions. Both of those cases were also 5-4 decisions in which, notably, Chief Justice Roberts voted with the majority in concluding that a campaign finance regulation violated the First Amendment. In *Williams-Yulee*, however, the Court emphasized the distinction between judges and "politicians." Even though they are elected, the Court concluded, judicial candidates are different than campaigners for political office. Unlike politicians who are expected to be "appropriately responsive" to the preferences of their supporters, judges must be completely independent of their supporters' preferences.[68] Furthermore, the Court found that a state's interest in maintaining public confidence in its judiciary "extends beyond its interest in preventing the appearance of corruption in legislative and executive elections."[69] Therefore, the Court determined that its precedents applying the First Amendment to political elections do not apply in this context.

In terms of potential impact, it appears that this ruling will increase the likelihood that the regulation of contribution solicitations in the context of judicial elections will be upheld. It is unclear, however, how it will affect the constitutionality of other types of judicial campaign finance regulation such as spending limits. Likewise, its impact, if any, on the constitutionality of campaign finance regulation in political elections remains to be seen.

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[60] 191 L. Ed. 2d 570 (2015). For further discussion, *see* CRS Legal Sidebar WSLG1263, Judges Are Different: Supreme Court Upholds Ban on Campaign Fundraising By Judicial Candidates, by Cynthia Brown and L. Paige Whitaker, and CRS Legal Sidebar WSLG1100, Supreme Court Agrees to Consider Whether a State Prohibition on Judicial Campaign Fundraising Violates the First Amendment, by Cynthia Brown and L. Paige Whitaker.

[61] *Id.* at 583 (citing *Eu v. San Francisco County Democratic Central Committee*, 489 U. S. 214, 223 (1989)).

[62] *See id.* at 584.

[63] 536 U.S. 765 (2002).

[64] *See id.* at 787-88.

[65] *See Williams-Yulee*, 191 L.Ed. at 591-92 ("A State's decision to elect judges does not compel it to compromise public confidence in their integrity.").

[66] 134 S. Ct. 1434 (2014). *See supra* pp. 4-5, "Aggregate Limits."

[67] 558 U.S. 310 (2010). *See infra* pp. 12-15, "Corporations and Labor Unions."

[68] *Williams-Yulee*, 191 L.Ed. at 585 ("Indeed, such 'responsiveness is key to the very concept of self-governance through elected officials,'" quoting *McCutcheon v. Federal Election Commission*, 134 S. Ct. 1434, 1462 (2014).).

[69] *Id.*

Expenditures

Candidates

The Supreme Court has ruled that limits on candidate expenditures are unconstitutional in violation of the First Amendment. In *Buckley v. Valeo*,[70] the Court held that in contrast to contribution limits, expenditure limits impose significantly greater restrictions on First Amendment protected freedoms of political expression and association.[71]

Expenditure limits impose a restriction on the amount of money that a candidate can spend on communications, thereby reducing the number and depth of issues discussed and the size of the audience reached.[72] Such restrictions, the Court found, are not justified by an overriding governmental interest. That is, because expenditures do not involve money flowing directly to the benefit of a candidate's campaign fund, the risk of *quid pro quo* corruption does not exist. Further, the Court rejected the government's asserted interest in equalizing the relative resources of candidates, and in reducing the overall costs of campaigns.

Upon a similar premise, the Court rejected the government's interest in limiting a wealthy candidate's ability to draw upon personal wealth to finance his or her campaign, and struck down a law limiting expenditures from personal funds. When a candidate self-finances, the Court pointed out, his or her dependence on outside contributions is reduced, thereby lessening the risk of corruption.[73]

Likewise, in *Randall v. Sorrell*,[74] the Court struck down as unconstitutional a Vermont statute imposing expenditure limits on state office candidates.[75] In support of the limits, the state argued that they served the governmental interest in reducing the amount of time that candidates spend raising money in order for candidates to have more time to engage in public debate and meet with voters. Further, supporters of the law argued that in *Buckley*,[76] the Court did not consider this time saving rationale and had it done so, it would have upheld expenditure limitations in that decision.[77] While unable to reach consensus on a single opinion, six Justices agreed that the expenditure limits violated First Amendment free speech guarantees. Announcing the Court's judgment and delivering an opinion, joined by two other Justices, Justice Breyer found that there was not a significant basis upon which to distinguish the expenditure limits struck down in *Buckley* from the expenditure limits at issue in *Randall.* According to the opinion, it was not likely that fuller consideration of the "time protection rationale" would have changed the result of *Buckley* because the Court in that case recognized the link between expenditure limits and a reduction in the time needed by a candidate for fundraising, but nonetheless struck down the

[70] 424 U.S. 1 (1976).

[71] *See id.* at 23.

[72] *See id.*

[73] *See id.* at 53.

[74] 548 U.S. 230 (2006).

[75] *See id.* at 237-38. The expenditure limits imposed by the Vermont law were approximately $300,000 for governor, $100,000 for lieutenant governor, $45,000 for other statewide offices, $4,000 for state senate, and $3,000 for state representative, all of which were adjusted for inflation in odd-numbered years.

[76] 424 U.S. 1 (1976).

[77] *See Randall*, 548 U.S. at 245.

expenditure limits.[78] Therefore, Justice Breyer's opinion concluded, given the continued authority of *Buckley,* the Court must likewise strike down Vermont's expenditure limits.[79]

Political Parties

The Supreme Court has decided that limits on independent expenditures by political parties are unconstitutional under the First Amendment. Federal campaign finance law defines an independent expenditure to include spending for a communication that expressly advocates the election or defeat of a clearly identified candidate, and is not made in cooperation or consultation with a candidate or a political party. In *Colorado Republican Federal Campaign Committee v. FEC (Colorado I)*,[80] the Court held that independent expenditures do not raise heightened governmental interests in regulation because the money is deployed to advance a political point of view separate from a candidate's viewpoint and, therefore, cannot be limited under the First Amendment.[81] The Court emphasized that the "constitutionally significant fact" of an independent expenditure is the absence of coordination between the candidate and the source of the expenditure.[82]

In contrast, in *Colorado II*,[83] the Court ruled that a political party's *coordinated* expenditures—that is, expenditures made in cooperation or consultation with a candidate—may be constitutionally limited in order to minimize circumvention of contribution limits. According to the Court, unlike independent expenditures, coordinated party expenditures have no "significant functional difference" from direct party candidate contributions.[84]

The Court has also determined that a requirement that political parties choose between making coordinated and independent expenditures is unconstitutional. In *McConnell v. FEC,*[85] the Court held that Section 213 of BCRA,[86] which required political parties to choose between coordinated and independent expenditures after nominating a candidate, burdened the First Amendment right of parties to make unlimited independent expenditures.[87]

Corporations and Labor Unions

The Supreme Court has held that limits on corporate, and it appears labor union,[88] expenditures that are made independently of any candidate or political party are unconstitutional under the

[78] *Id.* The Breyer opinion notes that in *Buckley,* the Court observed that "Congress was trying to 'free candidates from the rigors of fundraising.'" *Id.* (citing *Buckley*, 424 U.S. at 9).

[79] *See id.* at 246.

[80] 518 U.S. 604 (1996).

[81] *See id.* at 614-615 (citing *FEC v. National Conservative Political Action Committee (NCPAC)*, 479 U.S. 238 (1985)).

[82] *Id.* at 617 (citing *Buckley*, 424 U.S. at 45-46; *NCPAC*, 479 U.S. at 498).

[83] FEC v. Colorado Republican Federal Campaign Committee (Colorado II), 533 U.S. 431 (2001). For further discussion, *see* CRS Report RS22644, *Coordinated Party Expenditures in Federal Elections: An Overview*, by R. Sam Garrett and L. Paige Whitaker.

[84] *Colorado II*, 533 U.S. at 464.

[85] 540 U.S. 93 (2003).

[86] P.L. 107-155, § 203, codified at 52 U.S.C. § 30116(d)(4), (formerly codified at 2 U.S.C. § 441a(d)(4)).

[87] *See Colorado II*, 533 U.S. at 213-21.

[88] Although the issue before the Court was limited to the application of the prohibition on independent expenditures and electioneering communications to Citizens United, a corporation, the reasoning of the opinion also appears likely to apply to labor unions. "The text and purpose of the First Amendment point in the same direction: Congress may not prohibit political speech, even if the speaker is a corporation or union." Citizens United, 558 U.S. 310, 376 (2010).

First Amendment. Such expenditures are protected speech, regardless of whether the speaker is a corporation. Permitting a corporation to engage in independent electoral speech through a political action committee (PAC) does not allow the corporation to speak directly, and does not alleviate the First Amendment burden created by such limits.

In *Citizens United v. Federal Election Commission*,[89] the Court invalidated two prohibitions on independent electoral spending. It struck down the long-standing prohibition on the use of corporate general treasury funds for "independent expenditures,"[90] and Section 203 of BCRA prohibiting the use of such funds for "electioneering communications."[91] The prohibitions are codified in FECA at 52 U.S.C. § 30118.[92] Independent expenditures are communications that expressly advocate the election or defeat of a clearly identified candidate, and are not coordinated with any candidate or party.[93] Electioneering communications are broadcast, cable, or satellite transmissions that refer to a clearly identified federal candidate and are made within 60 days of a general election or 30 days of a primary, and are not coordinated with any candidate or party.[94]

To mitigate concerns that the law could prohibit First Amendment protected issue speech—known as issue advocacy—a 2007 Supreme Court decision, *FEC v. Wisconsin Right to Life, Inc. (WRTL II)*,[95] narrowed the definition of an electioneering communication. In *WRTL II*, the Court determined that the term encompassed only express advocacy[96] (for example, communications stating "vote for" or "vote against") or the "functional equivalent" of express advocacy. That is, communications that could reasonably be interpreted as something other than an appeal to vote for or against a specific candidate were not considered electioneering communications. Despite the limiting principle imposed by *WRTL II*, the Court in *Citizens United* found that both prohibitions were a "ban on speech" in violation of the First Amendment.[97] In comparison to the prohibitions at issue in *Citizens United*, which include criminal penalties, the Court pointed out that it has invalidated even less restrictive laws under the First Amendment, such as laws requiring permits and impounding royalties.[98]

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[89] 558 U.S. 310 (2010). For further discussion, *see* CRS Report R41045, *The Constitutionality of Regulating Corporate Expenditures: A Brief Analysis of the Supreme Court Ruling in Citizens United v. FEC*, by L. Paige Whitaker.

[90] Codified at 52 U.S.C. § 30118(a), (formerly codified at 2 U.S.C. § 441b(a)).

[91] P.L. 107-155, § 203, codified at 52 U.S.C. § 30118(b)(2), (formerly codified at 2 U.S.C. § 441b(b)(2)).

[92] Formerly codified at 2 U.S.C. § 441b.

[93] 52 U.S.C. § 30101(17), (formerly codified at 2 U.S.C. § 431(17)).

[94] 52 U.S.C. § 30104(f)(3), (formerly codified at 2 U.S.C. § 434(f)(3)).

[95] 551 U.S. 449 (2007). *WRTL II* was decided four years after the Supreme Court upheld the electioneering communication prohibition against a First Amendment facial challenge in *McConnell v. FEC*, 540 U.S. 93 (2003). While not expressly overruling *McConnell*, the Court in *WRTL II* limited the law's application. For further discussion, *see* CRS Report RS22687, *The Constitutionality of Regulating Political Advertisements: An Analysis of Federal Election Commission v. Wisconsin Right to Life, Inc.*, by L. Paige Whitaker.

[96] In *Buckley*, the Supreme Court provided the genesis for the concept of issue and express advocacy communications. In order to avoid invalidation of a provision of FECA on grounds of unconstitutional vagueness, the Court applied a limiting construction so that it only applied to non-candidate "expenditures for communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office," i.e. express advocacy. In a footnote, the Court explained that this would restrict the application of the provision to communications containing express advocacy terms, such as "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," and "reject." *Buckley*, 424 U.S. at 44, n.52.

[97] *Citizens United,* 558 U.S. at 339.

[98] *See id.* at 337. According to the Court, the following actions would constitute a felony under the law: the Sierra Club running an ad within 60 days of a general election exhorting the public to disapprove of a Congressman who supports logging in national forests; the National Rifle Association publishing a book urging the public to vote for the challenger to an incumbent U.S. Senator who supports a handgun ban; and the American Civil Liberties Union creating a website

The statute prohibiting corporate expenditures contained an exception. It permitted corporations to use their treasury funds to establish, administer, and solicit contributions to a PAC in order to make expenditures.[99] The Court, however, rejected the argument that permitting a corporation to establish a PAC mitigated the complete ban on speech that the law imposed on the corporation itself. A corporation and a PAC are separate associations, the Court reasoned, and allowing a PAC to speak does not translate into allowing a corporation to speak.[100] Enumerating the "onerous" and "expensive" reporting requirements associated with PAC administration, the Court announced that even if a PAC could permit a corporation to speak, "the option to form a PAC does not alleviate the First Amendment problems" with the law.[101] Further, the Court pointed out that such administrative requirements may prevent a corporation from having enough time to create a PAC in order to communicate its views in a given campaign.[102]

After determining that the law bans free speech, the Court explained that it is subject to a strict scrutiny analysis, requiring the government to demonstrate that the restriction is narrowly tailored to further a compelling governmental interest. Employing that analysis, the Court noted that in *Buckley v. Valeo*,[103] it found that while large campaign contributions create a risk of *quid pro quo* candidate corruption, large independent expenditures do not.[104] In *Buckley*, the Court explained, it had found that limits on independent expenditures fail to serve the governmental interest in stemming the reality or appearance of corruption.[105]

Of significance, the Court in this case found that it was faced with conflicting precedent. On one hand, its 1978 decision of *First National Bank of Boston v. Bellotti*[106] had reaffirmed that the government cannot restrict political speech because the speaker is a corporation. On the other hand, its 1990 decision of *Austin v. Michigan Chamber of Commerce*[107] had permitted a restriction on such speech in order to avoid corporations having disproportionate economic power in elections. In *Bellotti*, the Court struck down a state law prohibiting corporate independent expenditures related to referenda. Notably, *Bellotti* did not consider the constitutionality of a ban on corporate independent expenditures in support of *candidates*. Even if it had, the Court in *Citizens United* said, such a restriction would also have been unconstitutional in order to be consistent with the main tenet of *Bellotti*, "that the First Amendment does not allow political speech restrictions based on a speaker's corporate identity."[108] In contrast, the Court in *Austin* upheld a state law prohibiting, and imposing criminal penalties on, corporate independent expenditures that supported or opposed any candidate for state office. According to the Court in *Citizens United*, in order to "bypass *Buckley* and *Bellotti*," the Court in *Austin* identified a new

telling the public to vote for a presidential candidate because of the candidate's defense of free speech. Such prohibitions, the Court concluded, "are classic examples of censorship." *Id.*

[99] 52 U.S.C. § 30118(b)(2)(c), (formerly codified at 2 U.S.C. § 441b(b)(2)(c)). The law also permits a corporation to establish a PAC in order to make contributions. As a result of *Citizens United*, corporations are currently only required to use PAC funds to make contributions.

[100] *See Citizens United*, 558 U.S. at 337.

[101] *Id.*

[102] *See id.* at 339.

[103] 424 U.S. 1 (1976).

[104] *See Citizens United*, 558 U.S. at 345.

[105] *See id.*

[106] 435 U.S. 765 (1978).

[107] 494 U.S. 652 (1990).

[108] *Citizens United*, 558 U.S. at 346-47 (quoting *Bellotti*, 435 U.S. at 784-85).

governmental interest justifying limits on political speech, the "antidistortion interest."[109] That is, the Court in *Austin* determined that "the corrosive and distorting" impact of large amounts of money that were acquired with the benefit of the corporate form, but were unrelated to the public's support for the corporation's political views, constituted a sufficiently compelling governmental interest to justify such a restriction.[110]

The Court rejected the antidistortion rationale it had relied upon in *Austin*. Independent expenditures, the Court announced, including those made by corporations, do not cause corruption or the appearance of corruption.[111] The *Austin* precedent "interferes with the 'open marketplace' of ideas protected by the First Amendment" by permitting the speech of millions of associations of citizens—many of them small corporations without large aggregations of wealth—to be banned.[112] The Court found that the First Amendment prohibits restrictions that allow the speech of some, but not of others, and said it was "irrelevant for purposes of the First Amendment that corporate funds may 'have little or no correlation to the public's support for the corporation's political ideas,'" noting that all speakers—including individuals and the media—are financed with monies derived from the economic marketplace.[113] In its prior jurisprudence, the Court observed, it has determined that the protections of the First Amendment extend to the political speech of corporations.[114] Specifically, the Court noted that it has rejected the argument that the political speech of corporations or other associations should be treated differently under the First Amendment "simply because such associations are not 'natural persons.'"[115] Notably, the Court also found that supporting the ban on corporate expenditures would have the "dangerous" and "unacceptable" result of permitting Congress to ban the political speech of media corporations.[116] Although media corporations were exempt from the federal ban on corporate expenditures, the Court announced that upholding the antidistortion rationale would allow their speech to be restricted, in violation of First Amendment precedent. In sum, the Supreme Court in *Citizens United* overruled its holding in *Austin* and the portion of its decision in *McConnell v. FEC* upholding the facial validity of the BCRA prohibition on electioneering communications, finding that the *McConnell* Court relied on *Austin*.[117]

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[109] *Id.* at 348

[110] *Id.* (quoting *Austin v. Michigan Chamber of Commerce*, 494 U.S. at 660).

[111] *See id.* at 357.

[112] *Id.* at 354.

[113] *Id.* at 351 (quoting *Austin*, 494 U.S. at 660).

[114] *See id.* at 342 (citing *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 778, n. 14) (citing *Linmark Associates, Inc. v. Willingboro*, 431 U.S. 85 (1977); *Time, Inc. v. Firestone*, 424 U.S. 448 (1976); *Doran v. Salem Inn, Inc*., 422 U.S. 922 (1975); *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546 (1975); *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975); *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974); *New York Times Co. v. U.S.*, 403 U.S. 713 (1971) (per curiam); *Time, Inc. v. Hill*, 385 U.S. 374 (1967); *New York Times Co. v. Sullivan*, 376 U.S. 254; *Kingsley Int'l Pictures Corp. v. Regents of Univ. of N. Y*., 360 U.S. 684 (1959); *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495 (1952)); *Turner Broadcasting System, Inc. v. FCC*, 520 U.S. 180 (1997); *Denver Area Ed. Telecommunications Consortium, Inc. v. FCC*, 518 U.S. 727 (1996); *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622 (1994); *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Board*, 502 U.S. 105 (1991); *Sable Communications of Cal., Inc. v. FCC*, 492 U.S. 115 (1989); *Florida Star v. B. J. F.*, 491 U.S. 524 (1989); *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767 (1986); *Landmark Communications, Inc. v. Virginia*, 435 U.S. 829 (1978); *Young v. American Mini Theatres, Inc*., 427 U.S. 50 (1976); *Gertz v. Robert Welch, Inc*., 418 U.S. 323 (1974); *Greenbelt Cooperative Publishing Assn., Inc. v. Bresler*, 398 U.S. 6 (1970)).

[115] *Id.* at 343 (quoting *Bellotti*, 435 U.S. at 776).

[116] *Id.* at 351.

[117] *See id.* at 365-66. Referencing Justice Scalia's concurrence in *WRTL II*, the Court agreed with the conclusion that "*Austin* was a significant departure from ancient First Amendment principles," and held "that stare decisis does not

The Supreme Court has clarified that its holding in *Citizens United* applies to state and local law. In *American Tradition Partnership v. Bullock*,[118] the Court rejected arguments made by the State of Montana attempting to distinguish a Montana law from the federal law invalidated by *Citizens United*. Reversing a Montana Supreme Court ruling, the Supreme Court found that the arguments proffered by the state either had already been rejected in *Citizens United* or did not distinguish that ruling in a meaningful way.[119] The Court reiterated that "political speech does not lose First Amendment protection simply because its source is a corporation."[120]

Conclusion

Throughout the history of its campaign finance jurisprudence, the U.S. Supreme Court has found that limits on contributions are afforded less rigorous scrutiny under the First Amendment than limits on expenditures. As a result, with some notable exceptions, the trend of the Court has been to uphold limits on contributions, but invalidate limits on expenditures. Its most recent rulings, however, have announced that only *quid pro quo* corruption or its appearance constitute a sufficiently important governmental interest to justify limits on both contributions and expenditures. Spending large sums of money in connection with elections without attempting to control how an officeholder exercises his or her official duties does not give rise to corruption, the Court has found. Further, government interests in lessening influence over or access to elected officials have been soundly rejected, as well as interests in lessening the costs of campaigns and equalizing financial resources among candidates. As a result, in 2014, the Court overturned limits on aggregate contributions. Although the Court did not expressly adopt a stricter standard of review for contribution limits, the Court's finding may have a doctrinal impact on the constitutionality of contribution limits in future rulings.

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compel the continued acceptance of *Austin*." *Id.* at 319 (quoting *WRTL II*, 551 U.S. at 449 (Scalia, J., concurring in part and concurring in judgment)).

[118] 132 S. Ct. 2490 (2012). For further discussion, *see* CRS Legal Sidebar WSLG94, *"No Serious Doubt" About It: Citizens United Applies to State Law Prohibiting Campaign Expenditures*, by L. Paige Whitaker.

[119] The Montana Supreme Court identified several interests in support of the law's constitutionality, thereby distinguishing it from the law upheld in *Citizens United*, including issues relating to corporate influence, sparse population, dependence upon agriculture and extractive resource development, location as a transportation corridor, and low campaign costs. The court determined that these interests left Montana particularly vulnerable to corporate control. *See Western Tradition Partnership, Inc. v. Attorney General*, 271 P.3d 1, 11 (Mont. 2011).

[120] *American Tradition Partnership*, 132 S. Ct. at 2491 (quoting *Citizens United*, 558 U.S. at 900 (internal quotation marks omitted)).

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